

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding the  
Implementation of the Suspension of Direct  
Access Pursuant to Assembly Bill 1X and  
Decision 01-09-060.

Rulemaking 02-01-011  
(Filed January 9, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
RELEASING STATUS REPORT AND  
SOLICITING COMMENTS**

Attached to this ruling is the "Status Report," dated April 18, 2005, and prepared by the Commission's Energy Division regarding Municipal Departing Load (MDL) Cost Responsibility Surcharge (CRS) Billing and Collection Bilateral Negotiations on the First Meeting of the Direct Access (DA)/MDL CRS Calculation Working Group.

Parties may comment, as they deem warranted, on the contents of the attached Status Report as part their reply comments due on April 29, 2005, regarding the MDL CRS Billing and Collection Workshop Report.

Dated April 22, 2005, at San Francisco, California.

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Thomas R. Pulsifer  
Administrative Law Judge

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**Status Report  
To ALJ Pulsifer**

**on  
MDL CRS Billing And Collection  
Bilateral Negotiations**

**and**

**First Meeting of  
DA/ MDL CRS Calculation  
Working Group**

Prepared by:  
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April 18, 2005

Energy Division

## Introduction

In Rulings dated March 28<sup>th</sup> and March 30<sup>th</sup>, Administrative Law Judge Pulsifer directed the Energy Division to convene two meetings related to (1) the billing and collection of the Cost Responsibility Surcharge obligations of Municipal Departing Load and (2) related calculations of those amounts, to be prepared in coordination with the ongoing calculations of Direct Access customer cost responsibility surcharge obligations. The Energy Division scheduled and facilitated these meetings on April 12 and April 14, 2005. As directed in ALJ Pulsifer's rulings, the Energy Division provides this status report, covering the topics listed below:

### March 28<sup>th</sup>, 2005 Ruling

1. "The Commission's Energy Division is authorized to proceed immediately with scheduling and coordination of negotiation sessions among the representatives of the IOUs and POUs for the purpose of developing a mutually agreeable bilateral agreement for MDL CRS billing and collection, either for transferred load only, or, if possible, also for the new load component."
2. "The Energy Division is authorized to move forward with establishing a Working Group for finalizing calculations relating to the MDL CRS obligations to date. The Energy Division shall serve as the central clearinghouse for MDL CRS data collection and modeling calculations."

### March 30<sup>th</sup>, 2005 Ruling

3. "A Working Group is hereby established for producing the calculations relating to Direct Access (as well as Departing Load) cost responsibility obligations for 2003 (on a true-up basis) and for 2004 and 2005 (on a forecast basis). The Commission's Energy Division shall coordinate meetings of the Working Group, as required to seek consensus on the inputs and related calculations required for the CRS obligations at issue. The Energy Division shall

serve as a central clearinghouse for the data collection and modeling calculations performed by the Working Group.”

The purpose of the April 12<sup>th</sup> meeting was to form the working group that will address the second and third topics listed above; the April 14<sup>th</sup> meeting addressed the first topic above. This status report provides the results of both meetings.

## **Part I: Status Report on Working Group to Calculate CRS Obligations associated with Municipal Departing Load and Direct Access**

### Summary

The first of the two meetings convened by the Energy Division had the task of forming the working group that will calculate CRS obligations associated with municipal departing load and direct access. This group met Tuesday, April 12, 2005. As described below, the Energy Division believes that this group will be able to successfully meet its obligations, as outlined by ALJ Pulsifer:

- (1) finalizing calculations relating to the MDL CRS obligations to date, and
- (2) producing the CRS calculations for 2003 (on a true-up basis), and for 2004 and 2005 (on a forecast basis).

### Details of discussion

First, it should be noted that due to problems with the Commission's teleconference hookup, some parties who had intended to participate remotely via the phone were precluded from participating in the workshop. The Energy Division offered to provide a summary of the meeting, and some parties accepted the offer.

### Agreement on Objectives of Working Group

Following introductions and a review of the agenda, the group discussed the suggested working group objectives outlined on the agenda (the complete agenda is attached to this report). No participants disagreed with these

objectives, so at least on a working level, the Energy Division considers them as guides for the group's efforts from this point forward:

- *determine what is owed, who owes it to whom, and how it will be collected*
- *finalizing calculations relating to the MDL CRS obligations to date*
- *produce the CRS calculations for 2003 (on a true-up basis), and for 2004 and 2005 (on a forecast basis)*

### DWR Presentation

Following the group's agreement on its objectives, DWR's representative presented an overview of their experience in preparing the DA CRS calculations that have been used in Commission proceedings up to this point. (see separate PowerPoint attachment)

At the outset of this discussion, the Energy Division emphasized that--consistent with the group's agreed-upon objectives--the group itself will take over responsibility for these calculations. Within that context, DWR's representative described the development of the DA CRS model over time. That model began as a "public" model that relied on publicly available or verifiable energy modeling assumptions for certain inputs. However, once the IOUs resumed procurement of their net short, the model became a "confidential" model because the IOUs were no longer willing to share information about their own energy purchases with other parties in the proceeding. This created obvious difficulties for the DA CRS parties, who could no longer verify the basic calculation of their DA CRS obligations. Now, the challenge for this working group will be to create a non-confidential model that does allow this verification, so that the DA CRS parties can support the outcome.

At the conclusion of DWR's presentation, the group agreed to consider using a similar model that DWR has developed for use in the Commission's

“Community Choice Aggregation” (CCA) Proceeding, R.03-10-003. This model is public, and has been provided to the service list in R.03-10-003. DWR has also provided a preliminary version of this model, with DA CRS calculations, to the Energy Division but not to parties in R.02-01-011. Thus, the next steps for this working group will be to undertake a review of this model, on the following schedule:

1. DWR agreed to circulate the existing CCA model, as well as supporting testimony in that proceeding that explains the modeling process. On Wednesday, April 13, DWR sent that material to the R.02-01-011 service list and the list of attendees at the January 31<sup>st</sup> MDL CRS Billing and Collections workshop.
2. DWR will update its version of this model that shows its preliminary DA CRS calculations and provide it to the Energy Division, for circulation to participants by Friday, April 22.
3. DWR will send data requests to IOUs, copied to the service list, identifying the outstanding data needed to update the DA CRS calculations and add MDL calculations to the model.
4. DWR will provide, and Energy Division will circulate, a first draft of this “public” DA/MDL CRS model with updated inputs during the week of May 9th.
5. Parties will review the material from DWR, and the model will be discussed at the next meeting of this working group, on May 19th, 2005.

### Conclusion

The Energy Division believes that the process agreed upon by the working group will succeed in providing a forum for completion of the calculations needed by the Commission and parties to R.02-01-011 to achieve the objectives of (1) finalizing calculations relating to the MDL CRS obligations to date and (2) producing the CRS calculations for 2003 (on a true-up basis), and for 2004 and 2005 (on a forecast basis).



At the conclusion of the next meeting of this group (May 19th, 2005), the Energy Division should be able to say with certainty when these calculations will be completed and provided to the Commission. As noted elsewhere in this status report, final estimates of MDL CRS obligations will, in turn, provide the “quantitative” information that parties have said is needed in order for the discussions of billing and collection arrangements to be finalized as well.

## **Part II: Status Report on Negotiation Sessions Among The Representatives Of The IOUs and POUs For The Purpose Of Developing A Mutually Agreeable Bilateral Agreement For MDL CRS Billing And Collection, Either For Transferred Load Only, Or, If Possible, Also For The New Load Component**

### **Introduction**

The process for billing and collecting the relevant cost responsibility surcharge (CRS) components from applicable Municipal Departing Load (MDL) customers was initiated in a December 23, 2004 ALJ Ruling issued pursuant to D.03-07-028, as modified by D.03-08-076, D. 04-11-014, and D.04-12-059.

The December 23<sup>rd</sup> Ruling stated that “measures must be devised whereby the IOUs can access the data necessary to bill and collect CRS from the applicable customers of POUs,” and ordered that a technical workshop be held on January 31, 2005 for the purposes of seeking consensus among IOUs and POUs on a process and procedures to bill and collect the MDL CRS from the departing load customers with applicable transferred load and new load.

At the January 31<sup>st</sup> workshop, parties agreed that negotiations between the IOUs and the POUs concerning a mutually agreeable way to collect non-bypassable charges (NBCs) should be attempted. They also agreed that given that the IOUs already had information concerning POU transferred load customers, the billing and collection issues related to this set of customers could likely be resolved cooperatively, through bilateral negotiations. Parties were less optimistic about reaching a quick resolution on the new load billing and collection matters, but did agree to also attempt to seek a possible billing and collection resolution through similar bilateral negotiations.

As a result of the discussions held at the workshop, which were summarized in a March 11, 2005 Energy Division workshop report, a March 28<sup>th</sup> ALJ Ruling ordered that the Energy Division facilitate negotiation discussions in a working group setting in order to develop mutually acceptable bilateral billing

and collection agreements between individual IOUs and POUs and to report the progress made by the working group in a status report by April 18, 2005.

The following two sections provide a summary of the discussions that took place at the April 14, 2005 working group meeting and some concluding remarks of the Commission's Energy Division staff, based on observations that the Energy Division made as the facilitator of the meeting.

### **Working Group Discussions**

At the start of the working group discussion, CMUA was given an opportunity to expand on the issues that it had raised in its one-page handout titled "Talking Points," (ATTACHMENT 1) which the Energy Division e-mailed to the R. 02-01-011 service list on April 8, 2005.

Among the issues CMUA reiterated was its belief that the Commission should act as soon as possible on the pending Petitions for Modification filed by CMUA,<sup>1</sup> Modesto ID,<sup>2</sup> and Merced ID.<sup>3</sup> CMUA believes that MDL CRS billing and collection implementation activity negotiated before the pending petitions

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<sup>1</sup> "Motion of the California Municipal Utilities Association for Clarification or, alternatively, Petition to Modify Decision 04-12-059 and related Decision," filed on February 15, 2005.

<sup>2</sup> "Petition for Modification of opinion approving a rate design settlement lowering (PG&E's) rates by \$799 Million (D. 04-02-062)," filed on February 25, 2005.

<sup>3</sup> "Petition of Merced Irrigation District for Modification of D. 04-02-062," filed on February 25, 2005.

for modification are formally addressed by a Commission decision(s) may require future modifications based on the outcome of the decision(s), especially as it relates to New MDL, and therefore is better suited for negotiations after the Commission has addressed the issues raised in the petitions.

When CMUA was asked to expand further on why a discussion concerning a potential procedure to collect NBCs from New MDL would not be the best use of time at the meeting, CMUA pointed out that some of the POUs it represents fall under the category of “stand-alone” NMDL,<sup>4</sup> which may not bear any CRS responsibility if its petition to modify D. 04-02-062 is granted. Therefore, CMUA felt it was premature to have such a discussion at the April 14th meeting.

Following CMUA, PG&E presented its draft “Municipal Departing Load Billing and Collection Agreement” to the working group, noting that its draft agreement had been structured based on the PG&E/DWR billing and collection agreement that had been negotiated several years back. PG&E asserts that its agreement is an equitable one given the fact that DWR and PG&E had negotiated such an agreement from similar points of strength, and therefore, it represents a good starting point for IOU/POU billing and collection negotiations. As PG&E’s attorney went through the draft agreement section by section, she took note of parties’ comments and agreed to include such edits in a revised draft. This revised draft is attached to this report as “ATTACHMENT 2.”

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<sup>4</sup> In its Motion/Petition To Modify D. 04-12-059, CMUA cites Conclusion of Law 12 on page 76 of D. 03-07-028: “In accordance with Section 369, ‘new load’ for purposes of CRS recovery excludes load being met through a direct transaction that does not otherwise require the use of transmission and distribution facilities owned by the IOU.”

At the conclusion of PG&E's presentation of its draft MDL billing and collection agreement, the following issues were raised and discussed by the working group participants:

### **A Pro-Forma Agreement Would Not Address All Issues**

CMUA reiterated a point that it had made in one of its talking points – that even though it appreciated PG&E's attempted pro-forma agreement, the fact that the POUs face differing circumstances involving MDL billing and collection should preclude the CPUC and the IOUs from expecting that a generic, pro-forma agreement would satisfactorily address all the billing and collection issues faced by all the POUs. CMUA believes that PG&E's agreement can be used as a starting point, but that key language of any agreement will have to be tailored to the individual POU, via bilateral negotiations between the POU and the IOU.

### **It Is Infeasible To Consider Modifications Of Each POU's Billing And Collection Systems Until The CRS Amounts And Exemptions Are Known**

POU representatives mentioned that it is infeasible to ask the POUs' billing departments to modify their billing and collection systems before the pending petitions are addressed by the Commission, and before the applicable MDL CRS that departing load is obligated to pay is quantified – yearly dollar amounts, exemption dates, and applicable billing loads first need to be known before such implementations can occur.

### **Reimbursement Cost**

Some of the POU representatives questioned PG&E's approach in its draft agreement addressing how the reimbursement of incremental MDL CRS billing and collection costs would be computed by the IOUs and provided to the POUs.

POU representatives seemed to be unsure whether such a reimbursement method would recoup all such costs. At least one POU representative mentioned that even if no new work hours were discretely allotted for MDL CRS billing and collection activities by the POUs, this would not reflect the fact that their employees' work load would increase, thereby affecting their other work. The representatives also seemed to question to what extent PG&E would accurately and timely be able to compensate the POUs for such costs.

### **The POUs Have Different Billing Systems and MDL CRS Applicability**

The fact that the POUs have different billing systems means that it would require different amounts of time for the POUs to set up their MDL billing and collection systems. Additionally, POUs have different numbers of applicable customers to bill and collect from. In fact, according to one POU representative, some POUs have only a few departing load customers from whom they may need to collect NBCs, in which case it may be more practical to manually calculate the charges they owe to the IOUs instead of modifying these POUs' entire billing systems.

### **Concern: The MDL CRS Billing Format and Partial Payments Accounting**

PG&E raised its concern regarding how the CRS components would be reflected on a POU's bill. PG&E believes that the CRS components should be itemized along with the other components of the POUs' charges, and not identified or highlighted in a different fashion to somehow suggest to their customers that they can forego paying certain charges.

Additionally, it is uncertain to the Energy Division how partial payments would be dealt with by the POUs. The Commission must be clear on how a partial NBC payment by a POU customer would be accounted for – would the DWR Power Charge and Bond Charge be given priority over the other NBCs, or

would a partial payment be allocated evenly among all NBCs? These are questions that need to be answered.

### **How Would DWR Be Able To Audit The Power and Bond Charge Amounts Submitted To Them?**

Does the fact that DWR needs to collect the Bond and Power charges mean that it too needs to set up billing and collection agreements with each POU? If this isn't the case, and these two charges are billed and collected by the IOUs and submitted to DWR, how would DWR be able to verify these amounts? In such a case, would DWR still need to set up an audit agreement with the POUs?

### **Edison States That It Is Important To Set a Discrete End-Date to The Negotiation Phase**

Edison wants to know when MDL CRS billing and collection negotiations can be expected to be either completed or determined not to be a viable option. As it stands, Edison stated that under the July 10, 2003 eligibility date adopted in D.04-12-059, it only has five POUs in its service territory from which it would need to collect the MDL CRS.<sup>5</sup>

### **Lack Of POU Representation**

POU representatives noted that even though they represent POU umbrella associations in Commission proceedings, they are not in a position to negotiate an MDL CRS billing and collection solution on behalf of each individual POU. CMUA, which stated that it represents about 95% of California's POUs,

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<sup>5</sup> When Edison made this statement at the working group meeting, it did not state whether it was using the definition that it has proposed and not the one that the City of Corona supports.

requested from PG&E that it be forwarded an edited copy of the draft billing and collection agreement so that CMUA can circulate it to the POUs that it represents. CMUA will notify the POUs it represents that they can contact PG&E to initiate billing and collection negotiation discussions.

### **Conclusion**

At the working group meeting, POUs raised concerns regarding the information obstacles that they assert they face in their attempt to adequately negotiate a CRS billing and collection solution with the IOUs. According to the POUs, two of the more notable obstacles are the lack of directive from the Commission dealing with the pending Petitions for Modification, and the lack of MDL CRS estimates. However, the Energy Division finds that the overall lack of progress made, even for the transferred MDL CRS billing and collections negotiations, to be somewhat troublesome in light of legislative direction concerning this issue.<sup>6</sup>

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<sup>6</sup> See PU Code Section 366.2(d)

(d)(1) It is the intent of the Legislature that each retail end-use customer that has purchased power from an electrical corporation on or after February 1, 2001, should bear a fair share of the Department of Water Resources' electricity purchase costs, as well as electricity purchase contract obligations incurred as of the effective date of the act adding this section, that are recoverable from electrical corporation customers in commission-approved rates. It is further the intent of the Legislature to prevent any shifting of recoverable costs between customers.

(2) The Legislature finds and declares that this subdivision is consistent with the requirements of Division 27 (commencing with [Section 80000](#)) of [the Water Code](#) and Section 360.5, and is therefore declaratory of existing law.



At the January 31, 2005 workshop, POU representatives stated that negotiations, at least for transferred load, were not only desirable by all parties, but also feasible. Yet, at the end of the discussions at the April 14<sup>th</sup> meeting, these same parties stated that they are not in a position to negotiate for the POUs they represent and that the POUs themselves would need to contact the IOUs in order to negotiate bilateral agreements.

The Energy Division, taking into account the obstacles cited by the POUs and the IOUs' desire to see negotiations come to an end, stated that it would indicate in this status report that the parties had decided at the working group meeting that additional negotiation meetings would not take place until the finalization of a Decision, or Decisions, addressing the pending Petitions for Modification concerning MDL CRS billing and collection issues.

Participants agreed that fifteen days after the date on which such Final Decision, or Final Decisions, addressing the petitions are adopted, PG&E should report to the Commission's Energy Division the number of POUs that have contacted PG&E expressing an interest in negotiating MDL CRS billing and collection solution. Edison should also report this information to the Energy Division in the same manner.

The Energy Division also stated that it would like to see PG&E file a supplement to update Advice Letter 2433-E, E-A or E-B, as necessary, in order to advance a process to bill and collect the MDL from applicable MDL transferred load customers that do not initiate settlement talks with the relevant IOU.

PG&E stated that it would like to encourage the Commission to lift the suspension from PG&E's Advice Letter 2483-E that would enable it to proceed with trying to collect the CRS from new departing load. Based on the discussions at the meeting, the Energy Division agrees with PG&E. In the event that negotiations between the POUs and the IOUs do not succeed – or are not

even attempted – the Commission needs to have an approach ready to collect NBCs from new departing load.

Contrary to the statements of the POU representatives at the January 31<sup>st</sup> workshop, it now appears that a dual track MDL CRS billing and collection process can no longer be seen as possibly creating a disincentive for the IOUs to negotiate in good faith with the POUs. Such a dual track approach may now provide a benchmark to the POUs for purposes of deciding whether individually negotiated bilateral agreements are feasible and worthwhile, given each POU's unique circumstances, possibly helping move along negotiation discussions for those POUs that are interested in doing so.

## ATTACHMENT 1

### *~ Talking Points ~*

During the April 4 teleconference sponsored by the CPUC Energy Division, CMUA was asked to provide a document describing its thoughts on certain issues affecting bilateral agreements regarding the billing and collection of Municipal Departing Load CRS. This document sets forth talking points for further discussion at the April 14 workshop. The views expressed in this document are those of CMUA, and do not necessarily represent a consensus view among POUs. CMUA hopes that this document, and the document to be produced by PG&E, can be used as means of spurring discussion among all parties at the April 14 workshop.

1. The CPUC should act as soon as possible on the pending Petitions for Modification of CMUA and Merced and Modesto Irrigation Districts so that parties may understand the scope of CRS affecting Transferred MDL and New MDL.
  - Implementation activity occurring in advance of the CPUC's decision may necessitate future modifications based on the outcome of the decision.
2. The POUs will review and consider the terms and conditions proposed by PG&E in its April 13 draft document.
  - The April 14 workshop provides an initial opportunity for the POUs to provide feedback on the document.
  - Given the variations among the POUs and circumstances involving Municipal Departing Load, the CPUC and the IOUs should not expect that a generic, pro-forma agreement will satisfactorily address all situations. However, such a document could be useful as a catalyst for individual discussions.
3. The POUs may individually discuss and pursue agreements to address billing and collection issues with the IOUs.
  - Since New MDL and Transferred MDL are not the same, individual POUs should not be precluded or discouraged from resolving Transferred MDL issues independently of New MDL issues. (Currently, at least one POU is being told by an IOU that the IOU

will not contractually address Transferred MDL issues unless New MDL issues are also addressed in the same agreement.)

4. It appears to be overly optimistic to assume that the myriad of New MDL issues can be addressed in a manner that allows significant progress to be made on agreements in advance of the CPUC's decision on the pending Petitions for Modification.
  - Nothing, however, should prevent individual POUs from discussing their respective situations with IOUs with the hope that mutually acceptable agreements can be developed.

## **ATTACHMENT 2**

### **MUNICIPAL DEPARTING LOAD BILLING AND COLLECTION AGREEMENT**

This Municipal Departing Load Billing and Collection Agreement (“Agreement”) between Investor-Owned Utility (“IOU”) and Publicly-Owned Utility (“POU”) addresses the billing and collection by POU of certain Non-Bypassable Charges (“NBCs”) from customers that take electric service from POU but owe NBCs to IOU. IOU and POU are collectively referred to herein as the “Parties” and individually referred to as a “Party.”

#### **RECITALS**

WHEREAS, on January 17, 2001, Governor Davis declared a “state of emergency” resulting from dramatic increases in the price of wholesale electricity that threatened the solvency of the state’s electric investor-owned utilities (“IOUs”);

WHEREAS, in response to the emergency, the Legislature enacted Senate Bill 7 from the First Extraordinary Session of 2001–2002 (SB 7X) and then Assembly Bill 1 (AB 1X), authorizing the Department of Water Resources (“DWR”) to begin purchasing power on behalf of electric consumers in the service territories of the state’s IOUs and suspending the right of electric customers to switch from IOU service to direct access service;

WHEREAS, on January 14, 2002, the California Public Utilities Commission (“Commission”) instituted a new rulemaking (R.02-01-011) to implement the suspension of direct access pursuant to AB 1X;

WHEREAS, the Commission’s rulemaking initially focused on the responsibility of direct access customers for the DWR Bond Charge, DWR Power Charge, Competition Transition Charge, and Southern California Edison’s Historical Procurement Charge — collectively referred to as the cost responsibility surcharge (“CRS”) — the scope of the Commission’s inquiry was expanded on March 29, 2002, to include the responsibility of “departing load” customers for those same charges;

WHEREAS, in Decision 02-11-022, the Commission determined that February 1, 2001 (the date DWR began procuring power on behalf of the state’s IOUs) should be the “cut-off” date for establishing direct access customers’ responsibility for the CRS;

WHEREAS, the Commission subsequently issued a series of decisions, including Decisions 03-07-028, 03-08-076, 04-11-014, and 04-12-059, holding customers previously served by IOUs but subsequently taking service from publicly-owned utilities (“POUs”), as well as customers never previously served by IOUs but taking service from POUs within the IOUs’ historic territory, responsible for some or all of the CRS components;

WHEREAS, the Commission held a workshop on January 31, 2005, on billing and collection issues, and various POUs indicated that they would be willing to consider entering into bilateral billing and collection agreements with the IOUs on a purely voluntary basis;

WHEREAS, the Commission's Administrative Law Judge in R.02-01-011 issued a ruling on March 28, 2005 directing IOUs and POU's to proceed with negotiations for bilateral agreements for cooperative billing and collection of CRS and other charges from departing load customers;

NOW, THEREFORE, IOU and POU agree to as follows:

## **Definitions.**

The following terms, when used herein (and in the attachments hereto) with initial capitalization, shall have the meaning specified in this Section 1. Certain additional terms are defined in the attachments hereto. The singular shall include the plural and the masculine shall include the feminine and neuter, and *vice versa*. "Includes" or "including" shall mean "including without limitation." References to a section or attachment shall mean a section or attachment of this Agreement, as the case may be, unless the context requires otherwise, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made (except as otherwise specifically provided herein). Unless the context otherwise requires, references to Applicable Laws or Applicable Tariffs shall be deemed references to such laws or tariffs as they may be amended, replaced or restated from time to time. References to the time of day shall be deemed references to such time as measured by prevailing Pacific time.

**Applicable Commission Orders** – Such rules, regulations, decisions, opinions or orders as the California Public Utilities Commission may lawfully issue or promulgate from time to time, which further affect the rights and obligations of the Parties under this Agreement.

**Applicable Law** – The Applicable Commission Orders and any other applicable statute, constitutional provision, rule, regulation, ordinance, order, decision or code of a governmental authority. [This definition will need to be modified on a case-by-case basis to include resolutions, policies, contracts, or other law with which individual POU's may be required to comply.]

**Applicable Tariffs** – IOU's tariffs, including all rules, rates, schedules and preliminary statements, governing electric energy service to Customers in IOU's service territory, as filed with and approved by the Commission and, if applicable, the Federal Energy Regulatory Commission.

**Assign(s)** – Assign(s) shall have the meaning set forth in Section \_\_\_\_.

**Business Days** – Regular Monday through Friday weekdays which are customary working days, excluding bank holidays, as established by Applicable Tariffs.

**Business Hours** – The period on a Business Day from 9:00 a.m. until 5:00 p.m.

**Claims** – Claims shall have the meaning set forth in Section \_\_\_\_.

**Commission** – The California Public Utilities Commission.

**Competition Transition Charge (CTC)** — *The Competition Transition Charge refers to the “ongoing” CTC and recovers the cost of power purchase agreements signed prior to December 20, 1995, in excess of a California Public Utilities Commission-approved proxy of the market price of electricity plus employee transition costs, as defined in Section 367(a) of the California Public Utilities Code.*

**Confidential Information** – Confidential Information shall have the meaning set forth in Section \_\_\_\_.

**Consolidated Billing Service** – Billing service through the use of Consolidated Bills as described in Attachment A to this Agreement.

**Consolidated Bill** – A consolidated bill calculated, prepared, and presented by POU to a Customer which includes both the POU’s charges and IOU’s Non-Bypassable Charges, as defined in Section \_\_ below.

**Customer** – A retail end-use customer that takes electric service from POU but owes NBCs to IOU. [May need to distinguish between/define Transferred Load vs. New Load.]

**Delinquent Payment** – Delinquent Payment shall mean the payment of any amount due under this Agreement after the time when payment is required to be made hereunder, as further described and/or limited hereunder.

**Department of Water Resources (DWR)** – *DWR is the California state agency authorized by the Legislature in Senate Bill 7 and Assembly Bill 1 from the First Extraordinary Session of 2001–2002 to purchase power on behalf of electric consumers in the service territories of Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company.*

**DWR Bond Charge** – *The DWR Bond Charge recovers DWR’s bond financing costs.*

**DWR Power Charge** – *The DWR Power Charge recovers the uneconomic portion of DWR’s prospective power purchase costs.*

**Effective Date** – The date this Agreement is effective in accordance with Section \_\_\_\_, as such date is set forth on the cover page hereof.

**Energy Cost Recovery Amount (ECRA) Charge** – The ECRA Charge recovers the costs associated with the Energy Cost Recovery Amount adopted by the Commission in Decision 04-11-015. The ECRA Charge superseded the Regulatory Asset Charge on March 1, 2005.

**Late Payment Rate** — The Prime Rate plus 3%.

**Nonbypassable Charges (NBCs)** – NBCs includes the CTC, DWR Bond Charge, DWR Power Charge, ND Charge, PPP Charge, TTA Charge, and, depending on the billing period in question, either the RA Charge or ECRA Charge.

**Nuclear Decommissioning (ND) Charge** – The ND Charge collects the funds required to restore the site where PG&E's nuclear power plants are removed from service.

**Prime Rate** — The rate which Morgan Guaranty Trust Company of New York, or its successor, announces from time to time in New York, New York, as its prime lending rate, the Prime Rate to change when and as such prime lending rate changes. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer.

**Public Purpose Program (PPP) Charge** – The PPP Charge collects the costs of state-mandated low-income, energy efficiency, and renewable generation programs.

**Regulatory Asset (RA) Charge** – The RA Charge recovers the costs associated with the Regulatory Asset adopted by the Commission in Decision 03-12-035. On March 1, 2005, the Regulatory Asset Charge was superseded and replaced by the ECRA Charge.

**Set-Up Fee** – Set-Up Fee shall have the meaning set forth in Section \_\_\_\_.

**Term** – The term of this Agreement as set forth in Section \_\_\_\_.

**Trust Transfer Amount (TTA) Charge** – The TTA Charge funds the cost of bonds used to pay for a 10 percent rate reduction for residential and small commercial customers.

The terms used in the attachments, but not specifically defined herein or elsewhere in this Agreement, should be understood by the Parties to have their ordinary meanings.

**Consolidated Billing Service.**



### ***Provision of Consolidated Billing Service by POU.***

*POU shall provide metering services, meter reading services and Consolidated Billing Service relating to NBCs owed by Customers to IOU pursuant to Applicable Law. POU-provided metering services, meter reading services and Consolidated Billing Service shall be provided in accordance with Attachment A hereto.*

*Unless otherwise specified in this Agreement, POU shall (i) follow its customary standards, policies and procedures in performing its duties hereunder and (ii) perform its duties hereunder using the same degree of care and diligence that POU exercises for its own account. [This provision would need to be modified for POU's serving Transferred Load that has already contractually elected a methodology for departing load charges (e.g., 12-month or 36-month snapshot).]*

### ***Implementation of Changed NBCs.***

POU shall implement any changes in NBCs, including changes in rates associated with specific NBCs pursuant to Applicable Tariffs, within \_\_\_\_ Business Days of IOU's notification to POU of such NBC changes. **[EXPAND.]**

### ***Modification of Billing and Metering Systems.***

POU shall have the right to modify and replace its billing and metering systems, subject to the requirements of Applicable Law, if any. However, to the extent that such modifications and replacements materially interrupt Consolidated Billing Service provided by POU to IOU, POU shall provide to IOU, as soon as reasonably practicable, prior written notice of any such changes, including, but not limited to, such changes as are required by Applicable Law. Moreover, to the extent any such modifications would affect the collection of NBCs in a manner which is different from the collection of POU charges, POU shall obtain IOU's prior written consent to such modifications, which consent IOU agrees shall not be unreasonably withheld or delayed. **[This provision may need to cross-reference Section 4 regarding Termination.]**

### ***Customer Inquiries.***

(a) POU shall address all Customer inquiries regarding the NBCs. Within \_\_\_\_ days of the Effective Date of this Agreement, IOU shall provide POU with the following materials to permit POU to respond to Customer inquiries regarding the NBCs: (i) prepared questions and answers for POU's Customer Service representatives to use to respond orally to Customer inquiries; (ii) prepared written material for POU to mail to Customers; (iii) a location on IOU's website where Customers may obtain more information about the NBCs; and (iv) a toll-free number at which IOU customer service representatives may be reached to respond to Customer inquiries, in the event that items (i) through (iii) do not satisfy Customer's inquiries. **[In the event POU does not want Customers to contact IOU directly, subsection (iv) may be**

**modified to allow POU customer service representative to act as liaison between Customer and IOU customer service representative.]**

(b) In the event that (i) IOU's failure to provide all such necessary information to POU, or (ii) IOU's provision of inaccurate information or (iii) IOU's failure to handle Customer inquiries referred to it by POU results in POU's non-compliance with its obligations under this Section \_\_\_\_, such non-compliance will not constitute a material breach of this Agreement and will not give IOU the right to terminate this Agreement. However, POU must make reasonable efforts to ensure its customer service representatives receive adequate training to respond to NBC-related inquiries.

## **Remittance of NBCs.**

### **NBCs.**

NBCs required to be remitted to IOU under this Agreement shall be based upon the IOU's NBC rates in effect from time to time pursuant to Applicable Law and Applicable Tariffs. Should any NBC be found to be invalid, repealed, or otherwise unenforceable after payment of such NBC by Customer(s), then any such unenforceable NBCs shall be refunded by IOU to POU for crediting to Customer(s)' accounts within \_\_\_\_ months of a final, unappealable determination of unenforceability. POU and IOU shall work together to establish a mutually agreeable refund plan.

### **Remittance of NBCs.**

Payment of NBCs shall be made on a monthly basis no later than the \_\_\_\_st day of each month in accordance with the following procedures. Details regarding POU's remittance of NBCs to IOU, including how remittances are to be calculated, are set forth in Attachment B.

*Remittance Report: Each Remittance shall be accompanied by a written report that provides (i) the effective rate period for the NBC remittances; (ii) the total NBC remittances broken down by revenue class or rate schedule; (iii) the total NBC remittances broken down by component (i.e., DWR Bond Charge, DWR Power Charge, CTC, et al.); (iv) aggregate usage by revenue class or rate schedule.*

*POU will not be required at any time to advance or pay any of its own funds in the fulfillment of its Customers' responsibilities with respect to NBCs owed to IOU.*

*Except as expressly provided in Section 6.2 of this Agreement, POU shall not deduct from amounts due to IOU hereunder any amounts owing by IOU to POU which relate to arrangements within or outside the scope of this Agreement, or any other amounts, and POU expressly waives any right to do so. The foregoing shall not limit POU's rights to seek any other remedies permitted under other arrangements with IOU.*

*Billing Report: POU will provide a monthly report of each NBC billed amount aggregated by component to allow the IOU to accurately record revenues. This information should be*

*provided electronically to the IOU by the second work day of the month. Information to include revenue class, billed revenue, and usage, and aggregated by component.*

### **3.3 Non-Payment of NBCs.**

- (a) In the event of non-payment of NBCs by any Customer, POU shall provide information regarding such Customer to a designated third-party collection agent, who shall be responsible for enforcing such non-payment on IOU's behalf, as well as to DWR.
- (b) IOU shall have the right and responsibility to hire such designated third-party collection agent, and IOU shall bear any associated fees. In its contract with the third-party collection agent, IOU shall ensure that Confidential Information regarding Customer(s) is not provided or disclosed to IOU. **[Need to discuss when NBC receivable is "written off" so that IOU can adjust uncollectibles.]**

### **Term and Termination; Events of Default.**

#### ***Term.***

The term of this Agreement shall commence on the Effective Date and shall terminate on the earlier of (a) \_\_\_\_ days after the last date NBCs are imposed on Customers, or (b) the earlier termination of this Agreement pursuant to this Section \_\_\_\_.

#### ***Termination.***

**[May need to consider provision allowing termination for reasons other than Events of Default – e.g., if POU's Billing and Metering Systems are unable to accommodate certain NBC changes.]**

#### ***Events of Default by POU.***

The following events shall constitute "Events of Default by POU" under this Agreement:

*any failure by POU to remit to IOU or its Assign(s) any NBCs collected from Customers in the manner and at the time specified in this Agreement (except to the extent otherwise allowed under this Agreement) that continues unremedied for \_\_\_\_ days after the IOU gives written notice to POU of such failure; or*

*any failure by POU to duly observe or perform in any material respect any other term or condition of POU set forth in this Agreement, which failure (i) materially and adversely affects the interests or rights of IOU or its Assign(s), and (ii) continues unremedied for a period of \_\_\_\_ days after written notice of such failure has been given to POU by IOU or its Assign(s).*

## **Consequences of Events of Default by POU.**

*Upon any Event of Default, IOU may, in addition to exercising any other remedies available under this Agreement or under Applicable Law, apply to any court of competent jurisdiction for sequestration and payment to IOU or its Assign(s) of NBCs. Remittances not made to IOU by POU on the date due shall bear interest at the Prime Rate from the first day after the due date until the \_\_\_ day after the due date, and at the Late Payment Rate thereafter until paid. Any late payment charge shall be separately stated on POU's Remittance written report.*

## **Events of Default by IOU.**

The following events shall constitute "Events of Default by IOU" under this Agreement:

*subject to subsections (b), (c), (d) and (e) below, IOU's failure to cure its material breach of any provision of this Agreement within \_\_\_ days after receiving written notice thereof from POU;*

*Except for amounts to which IOU has objected in writing pursuant to Section \_\_\_, IOU's failure to pay to Utility the Set-Up Fee or Recurring Fees within \_\_\_ days after the date they are due hereunder, as provided in Section \_\_\_;*

*Except for amounts to which IOU has objected in writing pursuant to Section \_\_\_, IOU's failure to fulfill any other monetary obligation hereunder within \_\_\_ days after receiving written notice from POU that such obligation is past due.*

Upon any default by IOU under this Section, POU may exercise any remedies available under this Agreement or under Applicable Law, provided that POU shall have no right to terminate this Agreement either in whole or in part or any obligation hereunder. IOU agrees that, except for amounts to which IOU has objected in writing pursuant to Section \_\_\_ and which are determined not to be owed, any Set-Up Fee or Recurring Fees, as provided in Section \_\_\_, which are not paid to POU on the date due shall bear interest at the Prime Rate from the first day after the due date until the \_\_\_ day after the date they are required to be made hereunder, and at the Late Payment Rate thereafter until paid. IOU further agrees that, except for amounts to which IOU has objected in writing pursuant to Section \_\_\_ and which are determined not to be owed, any other monetary obligation payable to POU by IOU shall bear interest at the Prime Rate from the date due until \_\_\_ days after receiving written notice from POU that such amount is overdue, and thereafter at the Late Payment Rate. IOU further agrees that when and to the extent that any amounts to which IOU has objected in writing pursuant to Section \_\_\_ are determined to be owing, such amounts shall bear interest from the due date at the rates described above for the applicable category of obligation.

## **Survival of Payment Obligations.**

Upon termination of this Agreement, IOU and POU shall remain liable to the other Party for all amounts owing under this Agreement. POU shall continue to collect and

remit, pursuant to the terms of this Agreement, any NBCs billed to Customers before the effective date of termination.

**[The following Section 5 may be deleted as unnecessary and overly broad.]**

## **Confidentiality.**

### **Proprietary Information.**

*Nothing in this Agreement shall affect POU's obligations to observe any Applicable Law prohibiting the disclosure of Confidential Information regarding its Customers.*

*Each Party may acquire information and material that is the other Party's confidential, proprietary or trade secret information. As used herein, "Confidential Information" means any and all technical, commercial, financial and customer information disclosed by one Party to the other (or obtained from one Party's inspection of the other Party's records or documents), including any patents, patent applications, copyrights, trade secrets and proprietary information, techniques, sketches, drawings, maps, reports, specifications, designs, records, data, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, object code, source code, and information related to the current, future and proposed products and services of each of the Parties, and includes, without limitation, the Parties' respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, business forecasts, sales and merchandising, and marketing plans and information. In all cases, Confidential Information includes proprietary or confidential information of any third party disclosing such information to either Party in the course of such third party's business or relationship with such Party. Confidential Information also includes any and all lists of Customers, and any and all information about Customers, both individually and aggregated, including but not limited to Customers' names, street addresses of Customer residences and/or facilities, email addresses, identification numbers, account numbers and passwords, payment histories, energy usage, rate schedule history, allocation of energy uses among Customer residences and/or facilities, and usage. Parties agree that all Confidential Information disclosed by the disclosing Party ("Discloser") will be considered Confidential Information by the receiving Party ("Recipient") if identified as confidential and received from Discloser.*

*Parties agree to take all steps reasonably necessary to hold in trust and confidence the other Party's Confidential Information. Without limiting the generality of the immediately preceding sentence, Parties agree (i) to hold the other Party's Confidential Information in strict confidence, not to disclose it to third parties or to use it in any way, commercially or otherwise, other than as permitted under this Agreement; and (ii) to limit the disclosure of the Confidential Information to those of its employees, agents or directly related subcontractors with a need to know who have been advised of the confidential nature thereof and who have acknowledged their express obligation to maintain such confidentiality.*

*Parties agree that the foregoing two paragraphs will not apply to any item of Confidential Information if: (i) it has been published or is otherwise readily available to the public*

*other than by a breach of this Agreement; (ii) it has been rightfully received by Recipient from a third party without breach of confidentiality obligations of such third party and outside the context of the provision of Consolidated Billing Service under this Agreement; (iii) it has been independently developed by Recipient personnel having no access to the Confidential Information; or (iv) it was known to Recipient prior to its first receipt from Discloser.*

*Parties agree that, in addition, Recipient may disclose Confidential Information if and to the extent required by law or a Governmental Authority, provided that (i) Recipient shall give Discloser a reasonable opportunity to review and object to the disclosure of such Confidential Information, (ii) Discloser may seek a protective order or confidential treatment of such Confidential Information, and (iii) Recipient shall make commercially reasonable efforts to cooperate with Discloser in seeking such protective order or confidential treatment. Parties agree that Discloser shall pay Recipient its reasonable costs of cooperating.*

### **No License.**

Nothing contained in this Agreement shall be construed as granting to a Party a license, either express or implied, under any patent, copyright, trademark, service mark, trade dress or other intellectual property right, or to any Confidential Information now or hereafter owned, obtained, controlled by, or which is or may be licensable by, the other Party.

### **Survival of Provisions.**

The provisions of this Section \_\_ shall survive the termination of this Agreement.

### **Payment of Fees and Charges.**

#### **POU Fees.**

IOU agrees that it will pay to POU a fee, calculated in accordance with Attachment A hereto (the "Set-Up Fee"), in order to cover POU's costs of establishing the procedures, systems, and mechanisms necessary to perform Consolidated Billing Service. In addition, IOU also agrees to pay to POU an annual fee, calculated in accordance with Attachment A hereto, payable monthly in arrears as provided in Section \_\_ hereof (the "Recurring Fees") for Consolidated Billing Service rendered pursuant to Section \_\_ and Attachment A to this Agreement. IOU agrees to pay to POU fees that will permit recovery of the POU's incremental cost of establishing procedures, systems and mechanisms necessary to perform Consolidated Billing Service in connection with the NBCs. **[Parties may wish to negotiate changing the term "incremental cost" to "reasonable cost" or defining what "incremental" means. Parties may also wish to negotiate some or all of the Set Up Fee being paid up-front rather than after-the-fact.]**

### **Payment of POU Fees and Charges.**

IOU agrees to pay POU the Set-Up Fee, in the manner provided in Section \_\_ below. After receipt of POU's invoice \_\_ days in advance, IOU agrees to pay to POU its Recurring Fees in monthly installments by the \_\_ day of each month in the manner provided in Section \_\_ below. To the extent that any invoiced amounts described in this Section \_\_ are not fully paid within \_\_ days after presentation, and IOU has not objected to POU in writing by such date, IOU agrees that POU shall have the right to deduct from any future Remittance(s) the unpaid and overdue amount which is not the subject of any such objection by such date, until such invoice is paid in full or until the dispute over the amount due has been resolved.

### **Method of Payment.**

*Except as otherwise expressly provided herein, any payment from either Party to the other Party under this Agreement shall be made by wire transfer of immediately available funds to the bank account designated by the receiving Party or, if mutually agreed, paid by means of a check or warrant sent to the recipient's address indicated in accordance with Section \_\_ hereof. Where the Parties have made arrangements for a bank or other third party to remit funds from one Party to the other Party, proper identification of the bank or third party, including the account number, shall be furnished in writing. The remitting Party shall reasonably cooperate in correcting any bank or other third-party errors and shall not be relieved of its payment responsibilities because of such errors.*

*Except as expressly provided otherwise herein or under any Applicable Law, POU shall be required to pay all expenses incurred by it in connection with its activities under this Agreement (including any fees to and disbursements by accountants, counsel, or any other person, any taxes, fees, surcharges or levies imposed on POU, and any expenses incurred in connection with reports to be provided hereunder) out of the compensation paid to it pursuant to this Section \_\_, and POU shall not be entitled to any extra payment or reimbursement therefor.*

### **Interest**

Except as provided in Sections \_\_, any Delinquent Payment under this Agreement (whether or not a regularly scheduled payment) shall bear interest at the Late Payment Rate.

### **Records; Audit Rights; Annual Certification.**

#### **Records.**

POU shall maintain accurate records and accounts relating to NBCs in sufficient detail to permit IOU's auditor to exercise the audit rights described in Section \_\_ below.

## **Audit Rights.**

*Upon \_\_\_\_ days prior written notice, IOU may request an audit, conducted by an independent third party, of POU's records and procedures, which shall be limited to records and procedures containing information bearing upon: (i) NBCs being billed to Customers by POU (and Customer payments of NBCs); (ii) fees for Consolidated Billing Service provided by POU pursuant to this Agreement; (iii) POU's performance of its obligations under this Agreement; and (vii) such other matters as may be permitted by Applicable Law. The audit shall be conducted during Business Hours without interference with POU's normal operations, and in compliance with POU's security procedures.*

*IOU shall have the right and responsibility to hire the independent third party auditor, and IOU shall bear any associated fees. In its contract with the independent third party auditor, IOU shall ensure that Confidential Information regarding Customer(s) is not provided or disclosed to IOU.*

- (c) Items identified during the independent third party audit requiring corrective action shall be discussed first with the POU and if necessary, the POU will take identify the planned corrective action and promptly resolve issues.

## **Confidentiality.**

Materials reviewed by the independent third party in the course of an audit may contain Confidential Information subject to Section \_\_\_\_ above. The use of all materials provided to the independent third party shall comply with the provisions in Section \_\_\_\_ and shall be limited to use in conjunction with the conduct of the audit and preparation of a report for appropriate distribution of the results of the audit consistent with Applicable Law.

## **Annual Reports.**

At least annually, POU shall cause a firm of independent certified public accountants (which may provide other services to POU) to prepare, and POU will deliver to DWR, a report addressed to POU (which may be included as part of POU's customary auditing activities), for the information and use of DWR, to the effect that such firm has performed certain procedures (the scope of which shall be agreed upon with IOU and DWR) in connection with POU's compliance with its obligations under this Agreement during the preceding year, identifying the results of such procedures and including any exceptions noted. POU may include the costs of producing this annual report in its estimate of Recurring Fees to be reimbursed by IOU.

## **Annual Certifications.**

At least annually, each Party will deliver to the other Party and to DWR a certificate of an authorized officer certifying under oath that to the best of such officer's knowledge, after a review of the Party's performance under this Agreement, such



Party has fulfilled its obligations under this Agreement in all material respects and is in compliance herewith in all material respects.

### ***Additional Applicable Laws.***

Each Party agrees to promptly notify the other Party in writing to the extent such Party becomes aware of any new Applicable Laws or changes (or proposed changes) in Applicable Tariffs hereafter enacted, adopted or promulgated that may have a material adverse effect on either Party's ability to perform its duties under this Agreement. However, failure to so notify the other Party pursuant to this Section \_\_ will not constitute a material breach of this Agreement, and will not give rise to any right to terminate this Agreement or cause either Party to incur any liability to the other Party or any third party.

### ***Other Information.***

Upon the reasonable request of IOU or its Assign(s), POU shall provide to IOU or its Assign(s) any public financial information in respect of the POU applicable to Consolidated Billing Service provided by POU under this Agreement, or any material information regarding the collection of NBCs to the extent such information is reasonably available to POU, which (i) is reasonably necessary and permitted by Applicable Law to monitor the performance by POU hereunder, or (ii) otherwise relates to the exercise of IOU's rights or the discharge of IOU's duties under this Agreement or any Applicable Law. In particular, but without limiting the foregoing, POU shall provide to IOU any such information that is necessary or useful to calculate IOU's revenue requirements.

### ***Customer Confidentiality.***

Nothing in this Section \_\_ shall affect the obligation of POU to observe any Applicable Law prohibiting disclosure of information regarding Customers, and the failure of POU to provide access to such information as a result of such obligation shall not constitute a breach of this Section \_\_\_\_ or this Agreement.

### ***Amendment Upon Changed Circumstances.***

#### ***Changed Circumstances.***

The Parties are informed that compliance with any Commission decision, legislative action or other governmental action (whether issued before or after the Effective Date of this Agreement) affecting the operation of this Agreement, may require that amendment(s) be made to this Agreement. If either Party reasonably determines that such a decision or action would materially affect the Consolidated Billing Service to be provided hereunder or the reasonable costs thereof, then upon the issuance of such decision or the approval of such action (unless and until it is stayed), Parties agree to negotiate the amendment(s) to this Agreement that is (or are) appropriate in order to

effectuate the required changes in Consolidated Billing Service to be provided or the reimbursement thereof. Notwithstanding Section \_\_, if the Parties are unable to reach agreement on such amendments within \_\_\_\_ days after the issuance of such decision or approval of such action, Parties shall submit the disagreement to the Commission for proposed resolution, in accordance with Applicable Law. Nothing herein shall preclude either Party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.

### ***Errors or Discrepancies.***

Each Party agrees to bring to the other Party's attention any errors or discrepancies that are discovered affecting the operation or implementation of this Agreement, and to meet and confer upon such event to negotiate any amendments to this Agreement that are appropriate to correct such errors or discrepancies. If the Parties are unable to reach agreement on such amendments within \_\_\_\_ days after the discovery of such errors or discrepancies, either Party may, in the exercise of its sole discretion, submit the disagreement to the Commission for proposed resolution, in accordance with Applicable Law. Nothing herein shall preclude either Party from challenging the decision or action which such Party deems may adversely affect its interests in any appropriate forum of the Party's choosing.

### **Dispute Resolution.**

#### ***Dispute Regarding Agreement.***

In the event a Party ("Disputing Party") has any dispute regarding any provision of this Agreement, the Disputing Party shall notify the other Party ("Responding Party") in writing of the basis for its dispute, and Responding Party shall provide a written response within \_\_\_\_ days. If Disputing Party is not satisfied with Responding Party's response, Disputing Party shall notify Responding Party within \_\_\_\_ days of receiving the response that Disputing Party wishes to pursue informal dispute resolution by the Commission's Administrative Law Judge Division. If the dispute is not resolved within \_\_\_\_ days of the Disputing Party's request to pursue informal dispute resolution, the dispute may be resolved through binding arbitration, with the arbitrator to be mutually agreed upon by the Parties and costs of said arbitrator to be borne equally by the Parties. **[This provision may need to be negotiated on a case-by-case basis, depending on each POU's preferences and requirements with respect to dispute resolution – e.g., mediation, arbitration, forum for raising claims.]**

#### ***Customer Disputes***

In the event a Customer has any dispute regarding payment of the NBCs, POU shall direct Customer to IOU's customer service representative designated to address such disputes. If the dispute cannot be resolved by IOU's customer service representative, IOU's customer service representative shall direct Customer to file a complaint with the Commission. **[In the event POU does not want Customers to contact IOU**

**directly, this provision may be modified to allow POU customer service representative to act as liaison between Customer and IOU customer service representative.]**

### **Data Retention.**

All data associated with the provision and receipt of Consolidated Billing Service pursuant to this Agreement shall be maintained for the greater of (a) the retention time required by Applicable Law for maintaining such information, or (b) three years.

### **Indemnity.**

Parties (each, the “Indemnifying Party”) shall defend, indemnify, and hold the other Party, together with its affiliates, and each of their respective officers, agents, employees, assigns and successors in interest (collectively, the “Indemnified Party”), harmless from and against all claims, losses, demands, actions and expenses, damages and liabilities of any nature whatsoever (collectively “Claims”) with respect to the acts or omissions of the Indemnifying Party or its officers, agents, contractors and employees or with respect to Indemnifying Party’s performance of its obligations under this Agreement. Notwithstanding the above, the provisions of this Section \_\_\_ shall not apply to any Claims to the extent they involve the negligence, gross negligence, recklessness, willful misconduct or breach of this Agreement by either Indemnified Party. Each Indemnified Party shall bear its own attorneys’ fees and costs under this Section \_\_\_\_\_. The Indemnifying Party’s obligations under this Section \_\_\_ shall survive termination of this Agreement.

### **Limitations on Liability.**

#### ***Consequential Damages.***

In no event will either Party be liable to the other Party for any indirect, special, exemplary, incidental, punitive, or consequential damages under any theory. Nothing in this Section \_\_\_ shall limit either Party’s rights as provided in Section \_\_ above.

#### ***Limited Obligations.***

IOU agrees that it will be liable for all amounts owing to POU for the Consolidated Billing Service hereunder, irrespective of (a) any Customer’s failure to make full and timely payments owed for NBCs, or (b) POU’s rights under Sections \_\_\_ and \_\_\_ to deduct certain amounts in calculating Remittances owing by POU to IOU. POU will not be required at any time to advance or pay any of its own funds in the fulfillment of its responsibilities hereunder with respect to NBCs, except to the extent provided otherwise herein.

## **Miscellaneous.**

### ***Jurisdiction.***

Nothing in this Agreement shall be construed as subjecting POU to the jurisdiction of the Commission.

### ***Independent Contractor.***

POU and its agents and employees shall perform their obligations under this Agreement as independent contractors and not as officers or employees of IOU.

### ***Remedies Cumulative.***

Except as otherwise provided in this Agreement, all rights of termination, cancellation, or other remedies in this Agreement are cumulative. The use of any remedy shall not preclude any other remedy available under this Agreement.

### ***Assignment.***

*Except as provided in paragraphs (b), (c) and (d) below, neither Party shall assign or otherwise dispose of this Agreement, its right, title or interest herein or any part hereof to any entity, without the prior written consent of the other Party. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with this Section \_\_\_\_ and when accepted by the assignee, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment in violation of this Section \_\_\_\_ shall be void.*

*Notwithstanding the provisions of this Section \_\_\_\_, POU may delegate its duties under this Agreement to an agent or subcontractor, provided that POU shall remain fully responsible for performance of any delegated duties and shall provide IOU with \_\_\_\_ days' prior written notice of any such delegation, and further provided that such delegation does not materially adversely affect IOU's or its Assigns' interests hereunder.*

*Any person (i) into which POU may be merged or consolidated, (ii) which may result from any merger or consolidation to which POU shall be a party or (iii) which may succeed to the properties and assets of POU substantially as a whole, which person in any of the foregoing cases executes an agreement of assumption to perform every obligation of the POU hereunder, shall be the successor to POU under this Agreement without further act on the part of any of the Parties to this Agreement; provided, however, that POU shall have delivered to IOU and its Assign(s) an opinion of counsel reasonably acceptable to IOU stating that such consolidation, merger or succession and such agreement of assumption complies with this Section \_\_\_\_ and that all of POU's obligations hereunder have been validly assumed and are binding on any such successor or assign.*

***Force Majeure.***

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement (including the obligation to remit money at the times specified herein) from any cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, restraint by court order or Government Authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. Notwithstanding anything to the contrary above, each Party's obligation to pay money hereunder shall continue to the extent such Party is able to make such payment, and any amounts owed by POU hereunder and received by POU shall be held in trust for IOU (whether or not held together with other monies) and remitted to IOU as soon as reasonably practicable. Any amounts paid or remitted pursuant to this Section \_\_\_\_ shall not bear interest which would otherwise accrue under Section \_\_\_\_.

***Severability.***

In the event that any one or more of the provisions of this Agreement shall for any reason be held to be unenforceable in any respect under Applicable Law, such unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such unenforceable provision or provisions had never been contained herein.

***Third-Party Beneficiaries.***

The provisions of this Agreement are exclusively for the benefit of the Parties and any permitted assignee of either Party.

***Governing Law.***

This Agreement shall be interpreted, governed and construed under the laws of the State of California as if executed and performed wholly within the State of California.

***Section Headings.***

Section and paragraph headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

***Waivers.***

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives such waiver in writing. The failure of either Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of

its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default.

### **Notices and Demands.**

*Except as otherwise provided under this Agreement, all notices, demands, or requests pertaining to this Agreement shall be in writing and shall be deemed to have been given (i) on the date delivered in person, (ii) on the date when sent by facsimile (with receipt confirmed by telephone by the intended recipient or his or her authorized representative) or electronic transmission (with receipt confirmed telephonically or electronically by the intended recipient or his or her authorized representative) or by special messenger, or (iii) seventy-two (72) hours following delivery to a United States post office when sent by certified or registered United States mail postage prepaid, and addressed as set forth below:*

IOU: [Insert]

POU: [Insert]

*Each Party shall be entitled to specify as its proper address any other address in the United States, or specify any change to the above information, upon written notice to the other Party complying with this Section \_\_\_\_.*

*Each Party shall designate on Attachment C the person(s) to be contacted with respect to specific operational matters. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party complying with this Section \_\_\_\_.*

*Copies of documents required by this Agreement to be delivered to the Commission shall be delivered in accordance with this Section \_\_\_\_ and shall be addressed as set forth below:*

California Public Utilities Commission  
505 Van Ness Avenue, 4th Floor  
San Francisco, California 94102

Attn: Sean Gallagher  
Energy Division Director  
Telephone: (415) 703-2059  
Facsimile: (415) 703-2200  
Email: shg@cpuc.ca.gov

### **Good Faith.**

Each Party shall perform all its actions, obligations and duties in connection with this Agreement in good faith.

***Attachments.***

The following attachments are incorporated in this Agreement:

Attachment A – Consolidated Utility Billing Services

Attachment B — NBC Remittance Details

Attachment C – Representatives and Contacts

**ATTACHMENT A**  
**CONSOLIDATED BILLING SERVICES**

**Section 1. Establishment and Maintenance of Consolidated Billing.**

Under Consolidated Billing, POU will include IOU's NBCs with other charges on the Customer's bill.

**Section 2. Customer Billing Procedures.**

**2.1. Compliance with Metering Standards.**

- (a) POU shall comply with all metering standards pursuant to Applicable Law and POU's standard practices.
- (b) POU shall read and validate data from meters, and edit and estimate such data pursuant to Applicable Law and POU's standard practices.
- (c) POU shall maintain and store current and historical meter and usage data pursuant to Applicable Law and POU's standard practices.

*[This section would need to be modified for POUs serving Transferred Load that has already contractually elected a methodology for departing load charges (e.g., 12-month or 36-month snapshot).]*

**2.2. Presentation of IOU's NBCs on Consolidated Bill.**

- (a) IOU's NBCs shall appear on all Consolidated Bills in the same manner in terms of appearance and at the same time as the POU's own charges.
- (b) Notwithstanding subsection (a) above, the POU must separately identify all of the NBCs (*i.e.*, DWR Bond Charge, DWR Power Charge, CTC, *et al.*) on all Consolidated Bills.
- (c) Notwithstanding subsection (a) above, the POU may change the manner of bill presentation of IOU's NBCs upon the agreement of IOU or at the request of IOU and upon agreement by the POU. Such agreement by IOU or POU is not to be unreasonably withheld.

**[Note: IOU may need to "advise file" bill formats with the Commission, so IOU may need to provide POU with sample bill formats.]**

**2.3. Adjustments to IOU NBCs.**

POUs shall not make any adjustments to IOU's NBCs owed by any Customer. POUs will not waive any late payment fee or modify the terms of payment of any amounts



payable by Customer unless such action is consistent with the action taken with respect to its own Charges under Applicable Law or POU's standard practices.  
**[Parties may need to consider what happens if Customer disputes NBCs and does not pay NBCs but otherwise pays POU charges owed.]**

**[Note: If, at a later date, PG&E is granted the authority to levy a late payment fee on delinquent, query whether POU should apply the LPF, assuming that PG&E paid any systems set up fee.]**

#### **2.4. Format of Consolidated Bills.**

POU shall conform to such requirements in respect of the format, structure and text of Consolidated Bills as Applicable Law or POU's standard practices shall from time to time prescribe. POU shall, subject to the requirements of Sections 1 and 2 of this Attachment A, determine the format and text of Consolidated Bills in accordance with its reasonable business judgment, and its policies and practices with respect to its own charges.

#### **2.5. Customer Notices.**

*If IOU's NBCs are revised at any time, POU shall, to the extent and in the manner and timeframe required by Applicable Law, provide Customers with notice announcing such revised NBCs. Such notice shall, as appropriate, include publication, inserts to or in the text of the bills or on the reverse side of bills delivered to Customers, and/or such other means as POU may from time to time use to communicate with its Customers. The format of any such notice shall be determined by the mutual agreement of the Parties.*

*In addition, at least once each year, to the extent permitted by Applicable Law, POU shall cause to be prepared and delivered to Customers a notice stating, in effect, that DWR Bond and Power Charges are owned by DWR and not POU or IOU. Such notice shall be included, in a manner and format to be agreed upon by the Parties and DWR, either as an insert to or in the text of the bills or on the reverse side of bills delivered to such Customers or shall be delivered to Customers by electronic means or such other means as POU may from time to time use to communicate with its Customers.*

#### **2.6. Delivery.**

POU shall deliver all Consolidated Bills (i) by United States Mail in such class or classes as are consistent with policies and practices followed by POU with respect to its own charges or (ii) by any other means, whether electronic or otherwise, that POU may from time to time use to present its own charges to its Customers. In the case of Consolidated Billing Service, POU shall pay from its own funds all costs of issuance and delivery of Consolidated Bills, including but not limited to printing and postage costs as the same may increase or decrease from time to time.

### **Section 3. Customer Payments.**

POU shall permit Customers to pay IOU's NBCs through any of the payment options then offered by POU to Customers for payment of POU charges appearing on the Consolidated Bill. POU shall not permit Customers to direct how partial payments of balances due on Consolidated Bills will be applied. **[Note: Need to include discussion of priority and allocation of partial payments. Also need to be able to track what is paid to DWR vs. IOU.]**

### **Section 4. Collection and Nonpayment.**

#### **4.1. Collection of IOU's NBCs.**

POU will collect IOU's NBCs in accordance with POU's standard practices, and will notify Customers of amounts overdue for IOU's NBCs in accordance with such practices. Such collection practices shall conform to all requirements of Applicable Law. POU will post all payments for IOU's NBCs as promptly as practicable, but in no case less promptly than POU posts payments for POU charges.

#### **4.2. Termination of Customer's Electrical Service.**

POU shall adhere to and carry out disconnection policies in accordance with Applicable Law or POU's standard practices. **[Parties may need to consider what happens if Customer disputes NBCs and does not pay NBCs but otherwise pays POU charges owed.]**

### **Section 5. Taxes and Fees Service.**

Subject to Section \_\_\_\_, IOU shall remit to the various authorities the taxes and fees assessed to Customers on IOU's NBCs. **[This provision subject to further analysis, particularly depending on individual franchise agreements, etc.]**

### **Section 6. Late Payments.**

In the event that POU receives late payment interest charges from a Customer, such payment shall be allocated to IOU based upon the same proportion that IOU's NBCs bear to the total POU charges on the Consolidated Bill. POU shall not allocate to IOU any other late payment service charges or collection fees (including but not limited to disconnection or reconnection services or similar charges related to Customer defaults).

### **Section 7. Reimbursement of POU Costs.**

IOU agrees that POU shall be reimbursed for the reasonable costs of the Consolidated Billing Service it performs for IOU under this Agreement, except for those costs that would have been incurred in providing Consolidated Billing Service for Customers in

the absence of this Agreement. IOU agrees that any dispute concerning the reasonableness of the costs of Consolidated Billing Service charged to IOU under this Agreement shall not be subject to Commission jurisdiction but shall be raised at the court of competent jurisdiction. POU shall exercise commercially reasonable efforts in managing its operations to minimize such costs and keep such costs within the estimated amounts referenced below.

**7.1. Charges for Consolidated Billing Service.** The Set-Up Fees and Recurring Fees set forth below are POU's estimate of its costs of providing Consolidated Billing Service as described in Sections \_\_\_ and \_\_\_ of the Agreement. POU shall have no obligation to track the actual costs for Recurring Services and items where the cost of tracking is burdensome or requires the development of new cost-accounting procedures. The foregoing sentence notwithstanding, if the responsible manager at POU becomes aware that the actual costs of providing such services are 10% greater or less than the estimates set forth below, POU shall give IOU written notice of (1) the reason(s) for such greater or lesser costs, and (2) POU's revised estimate of the Set-Up Fees and/or Recurring Fees corresponding to such greater or lesser costs. Upon receipt of such notice, IOU may either accept the revised fees or, in cooperation with POU, examine alternatives for reducing fees. Upon IOU's agreement, not to be unreasonably delayed or withheld, revised Set-Up Fees and/or Recurring Fees shall be effective. IOU agrees that Set-Up Fees and Recurring Fees, as set forth below or in a notice given pursuant to this Section \_\_\_, shall be due and payable as provided in Section \_\_\_ of the Agreement.

**a. Set-Up Fees.** The Set-Up Fees for programming POU's billing and related customer care systems to implement Consolidated Billing Service, for modifying POU's electronic data interchange system to implement Consolidated Billing Service, and for implementing facilities and procedures for fielding Customer inquiries regarding IOU's NBCs pursuant to Section \_\_\_, will total \_\_\_. The basis for this fee is set forth in Table 1 to this Attachment A.

**b. Recurring Fees.** The Recurring Fees for processing Remittances and fielding Customer inquiries regarding IOU's NBCs will total \_\_\_ in 2005 and \_\_\_ per calendar year in each subsequent year.

**c. Invoicing; Payment.** POU will invoice IOU for, and IOU agrees to pay such invoiced Fees, in the manner set forth in Section \_\_\_ of the Agreement. Subject to the foregoing sentence, each invoice will:

(1) include or enclose documentation showing the basis of such Fees, provided, however, that where providing such documentation would be burdensome, the relevant invoice(s) may instead disclose POU's reasonable method of approximating the Fees;

(2) specify POU's hourly labor rates and estimated total hours for completion of a given task; and

(3) include or enclose invoices/vendor receipts for equipment purchases.

IOU shall not unreasonably withhold or delay approval or payment of any invoiced Fees.

d. **Contact for Invoices.** Invoices shall be addressed to:

Attn: [INSERT]

**ATTACHMENT A — TABLE 1**

<b><u>Items</u></b>	<b>SETUP</b>	<b>RECURRING</b>			
	<b>2005</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
<b>Billing Systems Programming:</b> Analysis and design, programming, unit and system testing for multiple billing systems and programming to display NBCs on Customer bills.	[insert]				
<b>Revenue Reporting and Remittance Processes:</b> Following initial modifications to revenue reporting processes and development of new reports, ongoing costs include monthly revenue reporting and invoice processing.					
<b>Call Center Training:</b> Development and delivery of training materials for Customer contact personnel. Training labor Development and Materials					
<b>Total Costs</b>					

**ATTACHMENT B**  
**NBC REMITTANCE DETAILS**

**[Need to fill in]**

## **ATTACHMENT C**

### **REPRESENTATIVES AND CONTACTS**

A. Parties' Representatives:

Utility Representative:

[PG&E Name]  
Pacific Gas and Electric Company  
P.O. Box 7442  
San Francisco, CA 94120

Phone: (415) 973-XXXX  
Facsimile: (415) 973-XXXX  
Email: XXX@pge.com

POU Representative:

[Insert]

B. Contact Persons:

The Parties shall make the following contact person(s) available with respect to the operational matters described below:

1. For billing operations:

[Insert]

2. For Customer inquiries:

[Insert]

**R. 02-01-011**

**Working Group to Calculate CRS Obligations associated with Municipal  
Departing Load and Direct Access**

**April 12, 2005**

<p><b>Remote Access Call-in number: 866-687-1443, participant passcode 737358#</b></p>
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**Agenda**

**1:00     Introductions  
          Review Agenda**

**1:15     Objectives of Working Group**

- Text from Energy Division Report on January 31<sup>st</sup>, 2005 Workshop:  
*“Creation of a working group will provide a much-needed ongoing forum for collaborative efforts by interested parties, who must work together to complete the work necessary to bring this proceeding to a close. In short, parties need to “roll up their sleeves” and do the hard work, as equal partners, that is necessary to determine what is owed, who owes it to whom, and how it will be collected.”*
- Municipal Departing Load (MDL): *“The Energy Division is authorized to move forward with establishing a Working Group for finalizing calculations relating to the MDL CRS obligations to date. The Energy Division shall serve as the central clearinghouse for MDL CRS data collection and modeling calculations.”* (March 28, 2005 ALJ Ruling)
- Direct Access Cost Responsibility Surcharge (CRS) for 2003-2005:  
*the Commission’s Energy Division shall take the lead in coordinating the Working Group to produce the CRS calculations for 2003 (on a true-up basis), and for 2004 and 2005 (on a forecast basis) in coordination with the [MDL] Working Group process* (March 30, 2005 ALJ Ruling)



**1:30      DWR Presentation**

- How can the parties assume responsibility for ongoing preparation of the MDL and CRS calculations?
  - DWR explanation of the “total portfolio” modeling approach as it was initially proposed by CRS parties, then prepared by DWR/Navigant, and adopted by CPUC in D.02-11-022
- Data Issues
  - What data still needed to complete MDL and/or DA CRS calculations? Who shall be responsible for providing this data?
  - Confidentiality of data: how can this be resolved in order to build a “joint-use” model available to all parties in this proceeding?

**2:15      Break**

**2:30      Discussion**

- MDL Calculations
  - As an initial step, specific load data to perform the MDL CRS calculations needs to be provided. As a preliminary task for the working group, outstanding data requirements need to be determined, and responsibility needs to be established as to who is to provide what data, with deadlines for doing so.
  - Some of the questions as to which categories of load are subject to specific charges, and the effective date of those obligations may still need to be clarified by the Commission in connection with the CMUA Petition to Modify.

## Attachment to Energy Division Status Report

- As a basis for the cost inputs to be used in the calculation of total MDL CRS obligations to date, the Power Charge/CTC accrual amounts for DA load shown below were adopted by the Commission in D.05-01-040, for the periods 2001-2003. Parties should comment on the applicability of these unit values (in \$/MWH) for use in the MDL CRS calculations as well, as summarized below.

### **Direct Access Cost Responsibility (in \$/MWH)**

	PG&E Territory	SCE Territory	SDG&E Territory
2001	19.00	23.54	10.10
2002	24.65	27.59	26.69
2003	21.93	27.62	21.40

#### □ CRS Calculations

- **2003**

- The 2003 DWR revenue requirements that have been finalized pursuant to D.05-03-024, form the basis for finalizing the true up of the 2003 DA/DL CRS obligations.
- The 2003 true up is also the triggering event to calculate the portion of the \$1 Billion reduction in DWR revenue requirement that is attributable to Customer Generation Departing Load (CGDL).

- **2004**

- The allocation of the DWR revenue requirement among the three IOU service territories and resulting DWR power charges for 2004 adopted in D.04-12-014 provides relevant inputs for computing the prospective DA/DL CRS obligations for 2004. This ruling thus authorizes parties to proceed with computing the prospective DA/DL CRS obligations for 2004, corresponding to the total 2004 DWR revenue requirement in D.04-12-014

## Attachment to Energy Division Status Report

- **2005**

- The allocation of the DWR revenue requirement and resulting DWR power charges for 2005 adopted in D.05-03-024 provides relevant inputs for computing the prospective DA/DL CRS obligations for 2005. This ruling thus authorizes parties to proceed with computing the prospective DA/DL CRS obligations for 2005, corresponding to the total 2005 DWR revenue requirement in D.05-03-024... Working Group participants should take into any subsequent Commission action on the Draft Decision as relevant to their calculations of the 2005 CRS.

- **Adequacy of DA CRS Cap**

- A separate ruling will be issued shortly addressing the procedural schedule and process for the review of the adequacy of the DA CRS cap to determine if it needs to be adjusted to assure that CRS undercollections are paid down by no later than the end of the DWR contract term in 2011, as required by D.03-07-030.

- **Process for Calculating DA CRS Obligations**

- **See attached text from March 30, 2005 Ruling of ALJ Pulsifer**

**Close  
of  
Day**

**Next Steps**

- Parties' Comments on Workshop Report are due April 15, 2005
- Energy Division submits status report to ALJ Pulsifer April 18, 2005

## **Excerpt from March 30, 2005 Ruling of ALJ Pulsifer**

### **Process for Calculating DA CRS Obligations**

By ALJ ruling dated March 28, 2005, a Working Group was established for computing CRS obligations associated with Municipal Departing Load. Consistent with that approach, the same Working Group shall be used to produce DA CRS calculations for 2003-2005. The Commission's Energy Division shall take the lead in coordinating the Working Group to produce the CRS calculations for 2003 (on a true-up basis), and for 2004 and 2005 (on a forecast basis) in coordination with the Working Group process outlined in the March 28, 2005 ruling. All interested parties, including DWR/Navigant, are invited to have representatives participate in the Working Group. The results of the Working Group's calculations shall be served on parties in this proceeding with opportunity to comment.

In the event that Working Group participants encounter areas of disagreement as to the calculation of the CRS obligations, the effects on the calculation under each of the disputed positions shall be computed and presented, together with arguments in favor of each of the alternative positions.

The Energy Division shall serve as the central clearinghouse for data collection and CRS calculations produced by the Working Group. As an initial step, outstanding data requirements need to be determined, with responsibility assigned as to who is to provide what data, and with appropriate deadlines. Some of the required data is available in underlying calculations of the DWR revenue requirements in the respective decisions referenced above. Additional data relating to utility-supplied generating resources will also be necessary to compute the DA CRS obligation to maintain bundled customer indifference on a "total portfolio" basis.

### **Excerpt from March 30, 2005 Ruling of ALJ Pulsifer**

After the CRS calculations are submitted by the Working Group, with opportunity for parties' comments thereon, a draft decision will be prepared to adopt cost responsibility obligations for DA and DL customers for each of the periods in question. The 2004 and 2005 obligations (calculated on a forecast basis) shall remain subject to true up pending the true up of the overall DWR revenue requirement for those periods.

In the ALJ ruling issued on March 28, 2005, set a due date of April 18, 2005 was set for a status report with respect to the MDL CRS calculations. By today's ruling, the April 18, 2005 scope of that status report is hereby expanded to include progress toward calculating the DA CRS obligations for 2003-2005. In the status report, a proposed schedule shall be presented for completing the CRS calculations and submitting them.

#### **IT IS RULED that:**

1. A Working Group is hereby established for producing the calculations relating to Direct Access (as well as Departing Load) cost responsibility obligations for 2003 (on a true-up basis) and for 2004 and 2005 (on a forecast basis).
2. The Commission's Energy Division shall coordinate meetings of the Working Group, as required to seek consensus on the inputs and related calculations required for the CRS obligations at issue. The Energy Division shall serve as a central clearinghouse for the data collection and modeling calculations performed by the Working Group.
3. The Energy Division shall provide notice through the Commission's a Calendar as to the initial meeting of the Working Group. All interested parties, including DWR/Navigant, are invited to have representatives participate in the Working Group.

**Excerpt from March 30, 2005 Ruling of ALJ Pulsifer**

4. The DA CRS obligations shall be computed in accordance with the authorized methodology set forth in past Commission decisions, consistent with the DWR revenue requirement inputs for 2003-2005 (as incorporated in the Attachment to this ruling).

5. The due date of April 18, 2005 for a status report with respect to MDL CRS calculations shall also apply to DA CRS calculations. The status report shall indicate progress toward calculating the DA CRS obligations for 2003-2005, as outlined above, and shall provide a proposed schedule for completing and submitting the CRS calculations.

Dated March 30, 2005, at San Francisco, California.

**R. 02-01-011**  
**Working Group to Calculate CRS Obligations**  
**associated with Municipal Departing Load and Direct Access**

**April 12, 2005**

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**R. 02-01-011**  
**Working Group to Calculate CRS Obligations**  
**associated with Municipal Departing Load and Direct Access**

	<b>NAME</b>	<b>REPRESENTING</b>	<b>e-mail</b>
25.	Carlos Velasquez	CPUC/Energy Division	los@cpuc.ca.gov
26.	Jonathan Bromson	CPUC	jab@cpuc.ca.gov



**April 14, 2005**

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**(END OF ATTACHMENT)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Releasing Status Report and Soliciting Comments on all parties of record in this proceeding or their attorneys of record.

Dated April 22, 2005, at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

\*\*\*\*\*

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If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.